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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1995

Addendum

PARAGUAY

[10 June 1996]

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* The initial report submitted by the Government of Paraguay is contained in document CAT/C/12/Add.3; for its consideration by the Committee, see documents CAT/C/SR.158, 159 and 161 and the Official Records of the General Assembly, Forty-ninth session, Supplement No. 44 (A/49/44, paras. 52-65).

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Introduction

1. As a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Paraguay hereby submits its second report for consideration by the Committee against Torture, in conformity with the provisions of article 19 of the Convention.

2. The present report refers to, as sources of supplementary and additional information, the initial report submitted by the Republic of Paraguay (CAT/C/12/Add.3) and the supplementary report, submitted in response to the questions raised by the Committee in connection with the initial report.

3. In conformity with the principles enshrined in its new Constitution adopted on 20 June 1992, Paraguay shares the international community's responsibility and desire to protect and monitor fundamental human rights; for this reason it has acceded to and ratified a number of international and regional instruments in this field.

4. After more than three decades of dictatorship, the Government of Paraguay, conscious of its historic responsibility, has ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Act No. 60/90 of 1 January 1990. It has thus reasserted its manifest desire and firm intention to ensure the full realization of representative, participatory and pluralistic democracy, based on recognition of human dignity, and fundamental human rights, thereby helping to ensure the universality of the Convention and making a clear commitment before the community of nations.

5. In its initial and supplementary reports, the Government of Paraguay described in detail the constitutional provisions and specific rules of national law that ensure respect for the human rights of all persons on its territory and subject to its jurisdiction, and also its commitment to combat any form of torture and impunity.

6. This report covers the period 1991-1995, and draws the Committee's attention to the measures adopted by the Government of Paraguay to prevent and punish torture. Bearing in mind the guidelines regarding the form and content of reports, the present report includes the new provisions and positive measures adopted in relation to the various articles of the Convention.

Information on new measures and new developments of relevance to the implementation of the Convention

Article 2

7. The legal framework is determined by the current Constitution, which prohibits torture. Article 5 states: "No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. Genocide and torture, and the enforced disappearance of persons, abduction and homicide for political reasons shall be imprescriptible".

8. Parliament is currently considering a new draft Penal Code, which was formulated by the Penal Code Sub-Committee, set up by the Parliamentary Committees on Legislation and Constitutional Affairs. This draft, which is annexed to this report, characterizes and establishes penalties for the offence of torture, and even specifies that acts of torture committed by a public official or with his consent should not go unpunished.

9. The texts on which the draft Penal Code is based were described in full in the supplementary report submitted by Paraguay to the Committee.

10. There have been significant developments in the judicial sphere in relation to numerous cases in which statutory limitation applied to acts of torture committed under the previous regime. In two such cases, the Republic's highest legal authority, the Supreme Court, has handed down judgements declaring the offence of torture to be imprescriptible, thereby confirming the decisions of the lower courts and judges on the matter.

11. It should also be emphasized that article 5 of the Constitution itself provides that no one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment and specifically stipulates that torture is imprescriptible. Similarly, article 100, paragraph 2, in chapter VII of the draft Penal Code declares punishable acts characterized by law and covered by article 5 of the Constitution to be imprescriptible; as indicated above, torture is one of them.

12. Cases of physical abuse in places of detention are few and far between, but do not go unpunished when reported to the proper authorities. With the present structure of the National Police since the adoption of an act unifying the various police forces and abolishing the Delegaciones de Gobierno (government delegations), various human rights bodies are able to make visits to police premises. These are readily accepted by the National Police high command. The new structure also makes it possible to respond positively to complaints of physical ill-treatment and to take administrative measures to dismiss the officer responsible, without prejudice to the institution by the Public Prosecutor's Department of criminal proceedings to punish persons guilty of torture.

13. Since the advent of democracy, it has not been necessary to declare a state of emergency. Parliament is currently considering a Public Prosecutor's Department Organization Bill which empowers the Attorney General, when a state of emergency has been declared, to intervene directly in cases involving habeas corpus, to visit places of detention or transfer centres, to keep a register of detainees and to ensure that persons are given the option of leaving the country. The Bill also allows an action of unconstitutionality to be brought against the decree or act establishing the state of emergency if it fails to comply with the requirements set out in the Constitution. To clarify this point, we may cite article 288 (Title III) of the Constitution, which contains the following provisions regarding states of emergency:

> "In the even of an international armed conflict, whether or not formally declared, or serious internal disturbance placing in imminent danger the authority of this Constitution or the regular functioning of the organs established by it, Congress or the Executive may declare a state of emergency in part or all of the national territory, for a maximum period of 60 days. If the declaration is made by the Executive, the measure shall be approved or rejected by Congress within a period of 48 hours"

14. The 60-day limit may be extended for successive periods of up to 30 days, for which an absolute majority of both Chambers shall be required.

15. When Parliament is in recess, the Executive may declare a state of emergency for a single period of no more than 30 days, but must within eight days submit the declaration for approval or rejection by Congress, which will be convened de jure for a special session solely for that purpose.

16. The decree or law declaring the state of emergency must set forth the grounds and facts on which it is based, the length of time it will remain in force, the territory affected and the rights that it restricts.

17. While the state of emergency is in force, the Executive may order the following measures only, by decree and on a case-by-case basis: the detention of persons suspected of having participated in any acts of this nature, their transfer from one place to another within the Republic, and the prohibition or restriction of public meetings and demonstrations.

18. In all cases, suspects will have the option of leaving the country.

19. The Executive will immediately transmit to the Supreme Court of Justice the names of persons detained under the state of emergency and inform it where they are being held or have been taken, in order that a judicial inspection may be possible.

20. Persons detained under the state of emergency must be held in clean and healthy facilities not intended for ordinary offenders or must remain under house arrest. Transfers must always be to clean and inhabited places.

21. A state of emergency may in no circumstances interrupt the functioning of the powers of the state, the applicability of the Constitution or specifically habeas corpus.

22. Congress may at any time, by an absolute majority, order the state of emergency to be lifted if it considers that the reasons for its declaration have ceased.

23. Once the state of emergency has ended, the Executive is required to inform Congress, within a period of not more than five days, of the action that has been taken while the state of emergency was in force.

24. Various articles of the Bill under consideration concern the responsibility of public officials who act arbitrarily and the penalties to which they are liable. For example, if, in the course of his duties or in connection with them, an official inflicts physical ill-treatment or injury or causes it to be inflicted, he will incur a penalty. Similarly, any official who, in connection with criminal or other proceedings involving coercive measures, physically ill-treats another person or in any other way uses violence to compel him to make or not to make a statement, is liable to punishment. The Constitution also establishes the responsibility of public officials, article 106 stipulating that "No official or public employee shall be exempt from responsibility. In cases of violations, offences or breaches committed by them in the performance of their duties, they shall be personally responsible, without prejudice to the subsidiary responsibility of the State. The State shall be entitled to demand the reimbursement of any sums it has had to pay in that connection".

Article 3

25. No applications have been received that raise the question of compliance with this article of the Convention. In any event, compliance with the Constitution is mandatory; it prohibits extradition on political grounds or if there is any likelihood that the person concerned might be subjected to torture by the authorities of the applicant country.

Article 4

26. Article 297 bis of the draft Penal Code under consideration characterizes torture in the following terms:

> "(1) Any person who, with the intention of destroying or seriously harming the personality of the victim or of a third party, and acting in an official capacity or with the agreement of an official:
>
> 1. Perpetrates a punishable act against:
>
> (a) Another person's physical integrity;
>
> (b) His liberty;
>
> (c) His sexual integrity;
>
> (d) Minors;
>
> (e) The lawful exercise of public duties; or
>
> 2. Inflicts serious psychological suffering on the victim,
>
> shall be liable to a custodial sentence of not less than five (and not more than 15) years.

"(2) Paragraph 1 shall apply even when the official's status:

1. Lacks a valid legal basis; or

2. Has been assumed by the perpetrator."

27. Thus, the bill before Parliament specifies those acts that may constitute acts of torture and furthermore covers the circumstances in which this violation of human dignity may occur; it even lays down penalties for public officials guilty of such acts.

28. The courts of first instance have handed down final sentences against public officials of the pre-1989 regime in a number of cases. Some of them are cited below:

(a) Case of Mario Schaerer Prono: a 25-year sentence was imposed on four former officials;

(b) Case of Amilcar Oviedo: a 25-year sentence was imposed on one official and a 5-year sentence on another. The representative of the Public Prosecutor's Department has appealed against the differentiation of punishment evident in these decisions and called for a 25-year sentence against both officials;

(c) Case of the Ligas Agrarias (Agrarian Leagues): the court imposed a sentence of 24 years, 4 months and 15 days on a former official;

(d) Case of Alberto Alegre Portillo: two officials received sentences of 12 years and six months.

29. The cases cited above are the result of criminal investigations into acts of torture, unlawful detention and even homicide, in which the judicial system has done its utmost to gather evidence in order to establish the crime. No sentences have yet been handed down in the other cases involving acts of torture committed prior to 1989, although a number of trials are at the sentencing stage; there is every possibility that those responsible will receive prison sentences.

30. In cases that occurred since 1989 and were reported to the courts, convictions have also been handed down against public officials who abused their position, and a number of proceedings instituted on the basis of a complaint by the Public Prosecutor's Department concerning physical ill-treatment by police officers or prison guards are still under way. Charges have also been laid in respect of a number of complaints against military personnel suspected of physically ill-treating soldiers performing compulsory military service, and the military courts have been instructed to investigate them.

31. The records of the Public Prosecutor's Department yield the following statistics for cases since 1991 in which criminal proceedings have been instituted in respect of alleged physical ill-treatment by public officials: ill-treatment in police stations, five cases; ill-treatment in prisons, seven cases; ill-treatment in the course of police operations, three cases.

Articles 5 and 6

32. There have been no developments since the previous reports were submitted to the Committee. However, under the draft Penal Code now before Parliament, punishable acts in respect of which Paraguay has ratified treaties are considered to be subject to universal legal protection. Accordingly, Paraguayan criminal law will apply to cases in which Paraguay is required by the terms of the Convention to prosecute a punishable act, even if it has been committed abroad.

33. Moreover, article 145 of the Constitution admits a supranational legal order on an equal footing with other States to guarantee the realization of human rights.

Article 6

34. There have been no developments with a bearing on the information contained in the previous reports nor have there been any difficulties in implementing this article of the Convention. The procedures based on the minimum rules and the relevant extradition treaties, in accordance with the guidelines of international law, remain fully in force and, as a result of the institution of the new legal system, they are fundamentally in conformity with the provisions of the Convention.

Article 7

35. There is no cause to modify anything stated in the previous reports.

Article 8

36. The procedures relating to extradition treaties are still fully in force. Moreover, the view that the rules of the Convention are fully applicable is substantiated by the provisions of article 141 of the Constitution, which stipulates that international treaties which have been validly concluded and approved by acts of Congress and whose instruments of ratification have been exchanged or deposited shall form part of domestic law, with the rank determined by article 137. The latter article establishes the following order of precedence: the Supreme Law of the Republic is the Constitution. The Constitution, the treaties, conventions and international agreements approved and ratified, the laws enacted by Congress and other legal provisions of lower rank, sanctioned in consequence, constitute national positive law.

Article 9

37. A development of the utmost importance occurred in 1992 with the discovery of the files of the Policía de la Capital (Asunción Police) dating back to the period prior to 1989. They have been thoroughly checked and provide evidence on the status of detained persons, together with other documents confirming the repression that took place before 1989. These documents have been used as evidence in a number of trials concerning human rights violations, and further criminal proceedings are pending against persons suspected of committing torture before 1989.

38. Since the so-called "Archivo del Terror" (Archives of Terror) documention centre came into operation, the relatives of victims have requested numerous documents; documents or copies confirming that persons were detained have been issued, as well as information relating to persons held by the National Police (known at the time as the Asunción Police). In order to shed additional light on this matter we append to this report two publications donated by their authors: "Es Mi Informe" (My report) and "El Paraguay y la Operación Condor en los Archivos del Terror" (Paraguay and Operation Condor in the Archives of Terror), for which we are grateful to Mrs. Rosa Palau Aguilar.

39. The significance of these documents has led to the creation of a Judiciary Documentation Centre for the Protection of Human Rights, which has in turn prompted the Office of the Attorney General to issue a decision establishing a Committee on Justice and Truth composed of individuals of unquestionable integrity such as Mr. Augusto Roa Bastos, Mr. Luis Alfonso Resk, Mr. Ramiro Dominguez, Mr. Miguel Angel Pangrazio and the journalist Mr. Alcibiades González Delvalle.

40. The above-mentioned documents are available to anyone, and the members of the Committee may be consulted during office hours. Copies of these documents to be used for legal purposes may be obtained rapidly through a habeas data procedure, the legal remedy currently in force under the Constitution.

Article 10

41. The National University has included the subject of human rights in its programme of studies, with the following sub-topics: affirmation of human rights, internationalization of human rights, definition of human rights, and human rights in Paraguay. The programme thus covers the whole range of international human rights documents, as well as comparative and, in particular, constitutional law in this field.

42. Fundamental rights are also being taught at the secondary level, using the experience of the generation of citizens who lived under the previous regime in order to instil an awareness of human rights.

43. On behalf of the Paraguayan State, the Directorate-General for Human Rights within the Ministry of Justice and Labour has carried out various promotion, dissemination and training projects. The most recent include the following:

(a) First seminar on disability, trade unionism and participation in community development, organized by the Paraguayan Association for the Blind, the Paraguayan Centre for Deaf-Mutes and the Asunción Association for the Rehabilitation of the Physically Impaired, with the support of the United Nations, the Department of Charity and Social Welfare, and the Directorate-General for Human Rights (Ministry of Justice and Labour) and the sponsorship of the National Institute for the Protection of Persons with Special Needs;

(b) Seminar on the National Constitution, indigenous peoples and the international instruments of the International Labour Organization (ILO), organized by the Paraguayan Institute for Indigenous People under the auspices of the Commission on Human Rights and Indigenous Affairs of the Chamber of Deputies, the Directorate-General for Human Rights (Ministry of Justice and Labour) and the Catholic University's Centre for Anthropological Studies;

(c) A Human Rights Documentation and Information Centre and Library, established with the help of the United Nations Development Programme (UNDP), the Centre for Human Rights and the Directorate-General for Human Rights (Ministry of Justice and Labour);

(d) In the area of formal education, an inter-agency committee has been set up, made up of officials of the Ministry of Education and Worship, the Directorate-General for Human Rights, and non-governmental organizations (NGOs) active in the field of education. Two other activities carried out in this domain are additional one-day training seminars for secondary education supervisors and for the Ministry of Education's technical guidance team. This plan has made it possible to develop programmes and events in the area of educational reform and to incorporate the subject of human rights into the school curriculum;

(e) In the field of justice, a project on diagnosis, classification and treatment in the prison system has been prepared, developed and implemented in cooperation with the Directorate of Penal Institutions, which has also sponsored a statistical analysis of minors held in the Colonel Panchito López Re-education Institute and legal assistance programmes for minors in situations of extreme poverty;

(f) One-day workshops have been held on curriculum development and on the preparation of a manual on civic education for secondary school teachers of human rights. These workshops were organized in cooperation with the Inter-American Institute of Human Rights, which has its headquarters in Costa Rica, and experts in formal and informal education. Participants included officials of the Ministry of Education and Worship and the Curriculum Department, administrators working in the field of indigenous affairs, teachers of Guaraní and representatives of NGOs;

(g) The second "Youth Elections", with the slogan "You, too, have a role to play", which included all primary and secondary schools in Paraguay, were held within the framework of the promotion and dissemination of the Convention on the Rights of the Child;

(h) The first "Manual of Curriculum Guidelines for Human Rights Education", developed with the help of Chilean, Colombian and Costa Rican experts, was published by the Directorate-General for Human Rights in cooperation with the Inter-American Institute of Human Rights;

(i) A training programme provided instruction in the use of the teachers' manual "The Curriculum and Human Rights":

(i) Stage one: training of 40 monitors from various primary and secondary school systems during April 1994;

(ii) Stage two: Distribution of the manual, "The Curriculum and Human Rights" in 18 primary school districts at eight-hour workshops which trained 45 teachers per day in its use. The project was supported by the Catholic University, the Interdisciplinary Centre for Social Law and Political Economics (CIDSEP), the Swedish Commission of Jurists, and regional government officials and administrators;

(iii) Stage three: One-day workshops on programme assessment and implementation, carried out with the participation of 45 teachers who conducted training sessions;

(j) First seminar on the legal framework for ethnic development, organized by UNDP and the Directorate-General for Human Rights (Ministry of Justice and Labour);

(k) Seminar on a theoretical and practical analysis of the evolution of the implementation of human rights in judicial decisions, organized by the Directorate-General for Human Rights and the Supreme Court, under the auspices of the Inter-American Institute of Human Rights.

44. The Government of Paraguay, in cooperation with the United Nations Centre for Human Rights, is currently carrying out a project on the development and implementation of the National Plan for the Promotion and Protection of Human Rights.

45. The National Plan originated in a request for cooperation from the Paraguayan Government to the United Nations Centre for Human Rights in Geneva, Switzerland. An international adviser (male) and a national adviser (female) carried out a diagnostic study, which was then submitted to civil society and government agencies for their consideration at a seminar entitled "Proposal for a Plan of Action for the Promotion and Protection of Human Rights in Paraguay".

46. Pursuant to the decisions taken at that seminar, a conference of NGOs was organized in order to enable those organizations freely to elect their representatives to the Preparatory Committee for the Development of the National Plan of Action for the Promotion and Protection of Human Rights in Paraguay (PRECOM); as a result, five members and their alternates were elected from various organizations working in the field of human rights. Five representatives of governmental organizations and their alternates were also elected to the Committee, whose work culminated in the preparation of rules of procedure to be used by the soon-to-be-established drafting committee.

47. The importance of the Preparatory Committee's work lies in the fact that, perhaps for the first time, representatives of the government and NGOs sat down together to discuss and work on the theme of human rights, a fact which augurs well for the future.

48. The Office of the Attorney General has also held seminars on human rights, including the following: a seminar on human rights trials in Paraguay, which informed the public of the progress of the criminal proceedings against a number of officials of the former regime; a seminar on minors in conflict with the law; a seminar on the implementation of international human rights law; and a seminar-workshop on doctrines and jurisprudence in the field of human rights. These seminars targeted police officers and prison guards from all districts; for example, from 14 to 17 November 1994, practical workshops were held to instruct police and prison officers in the mandatory regulations stemming from the international human rights instruments to which Paraguay is a party.

Article 11

49. The National Police Organization Act of 1993, establishes its structure, functions, powers and objectives. Article 3 of that Act stipulates that police officers shall conform to constitutional and legal provisions in the exercise of their functions and that their actions shall be based on respect for human rights. Among the responsibilities and powers established in article 6 of the Act are the following:

> "(8) Summon or arrest individuals in accordance with the law and within the framework established by the Constitution. Persons summoned must appear on a working day and during working hours and shall be heard and dealt with on the day and at the time indicated. Any delay shall be considered an abuse of authority.
>
> "(9) Arrest persons caught in the act, and those suspected, of committing an offence, in the manner and for the period established under the Constitution and the law, informing them of the reason for their arrest and their rights, and bringing them before the competent judge."

50. The National Police have publicly announced that they no longer act without proof, that their Criminal Investigation Department has modern laboratories through which scientific evidence is made available to the courts

when needed, and that one of their priorities is the professional training of staff, who are given instruction in the international Code of Conduct for Law Enforcement Ofiicials.

51. It has also been announced that by decision No. 816 of 3 October 1995, signed by the Minister of the Interior, a new Human Rights Protection Office has been established within the Legal Department of the Ministry of the Interior. A copy of this decision is appended. Although no information is as yet available on the future range of activities of this new office, it follows from the decision establishing it that one of its specific functions will be the handling of complaints of human rights violations committed by police officers.

52. The Office of the Attorney General has prepared the preliminary draft of a reform of the Code of Criminal Procedure, which sets forth basic principles in the area of human rights, incorporating the constitutional provisions concerning the need to respect the accused's rights during questioning and, in its preamble, describing the accused's statement as an indispensable act by which he voluntarily provides information concerning circumstances in his favour, and denies the charges against him. Since 1991, the Office of the Attorney General has seconded an official of the Public Prosecutor's Department to Tacumbú prison with a mandate to ensure the rights of prisoners and report any cases of physical abuse. In addition, weekly visits are made to the various prisons in the capital and periodic visits are made to those in the interior in order to give prisoners an opportunity to voice their concerns. This has made it possible for complaints to be made against police and prison authorities in specific cases of ill-treatment of prisoners and for proceedings to be instituted against those responsible for such acts.

Article 12

53. Compliance with the provisions of the Constitution is obligatory throughout the Republic. The fact that criminal law explicitly prohibits physical harassment or punishment and establishes penalties for abuse of authority by public officials, and that the draft Penal Code calls for the punishment of arbitrary acts, including physical harassment by public officials, constitutes proof of the will to ensure that no human rights violation goes unpunished.

Article 13

54. The judicial apparatus of the Republic as a whole and the Public Prosecutors's Department constitute trustworthy entities to which citizens may turn in order to lodge a complaint concerning any human rights violation.

55. The Executive includes a Directorate-General for Human Rights, the principal function of which is to disseminate the various international instruments ratified by Paraguay and to prepare human rights reports. Each of the two Chambers of Parliament also has a Human Rights Commission to which citizens' complaints of alleged physical ill-treatment may be submitted.

56. The human rights branch of the Public Prosecutor's Department and the courts accept and process all types of complaint according to the procedural directives currently in force. In the interior of the country, the regional governments include human rights departments to which complaints of ill-treatment may be addressed.

57. There have been no complaints of torture in the form of intimidation or threats since 1989, but article 4 of the Constitution guarantees State protection of life and physical integrity to all citizens.

58. Article 14 of the Public Prosecutor's Department Organization Bill, currently before Parliament, states: "The Public Prosecutor's Department shall protect anyone who, by cooperating in the administration of justice, places himself at risk, particularly in the case of offences associated with organized crime, abuse of authority or human rights violations. To this end, it shall have an ongoing programme to protect witnesses, victims and its own employees".

Article 14

59. A bill currently before Parliament, which originated in 1993 and was subsequently amended, is being considered with the following wording:

> "Art. 1. Those persons whose right to life, physical integrity or freedom was violated by officials, employees or agents of the State during the dictatorship of 1954-1989 shall be compensated under this Act.
>
> "Art. 2. The following human rights violations shall be compensated under this Act:
>
> (a) Enforced disappearance;
>
> (b) Summary or extrajudicial execution;
>
> (c) Torture resulting in manifest physical or psychological impairment;
>
> (d) Unlawful detention for a continuous period of over one year;
>
> (e) Unlawful detention for a continuous period of over three months."

60. The provisions of this bill cover offences against human dignity committed by public officials between 1954 and 1989. In order to be eligible for compensation, claims must be made either following a final decision by the courts or through the Office of the Ombudsman. The bill also extends eligibiity for compensation to a surviving spouse or to relatives within the first degree of consanguinity (this bill has already been provisionally passed by the Senate).

61. In cases of torture committed after 1989, article 106 of the Constitution makes public officials personally responsible for offences of all kinds, without prejudice to the subsidiary responsibility of the State.

62. Anyone who has been the victim of physical harassment by public officials may, irrespective of any legal action he may be entitled to take, apply to the Crime Victims' Assistance Office within the Public Prosecutor's Office. The function of this office is to provide assistance and treatment to victims, arrange for an evaluation of the psychological and social harm suffered, and advise family members on ways of assisting in the victim's treatment and recovery.

Article 15

63. The national courts' jurisprudence has been constant and consistent in considering that a statement lacks evidential value and may not, therefore, be used in a court of law unless it was made before the appropriate court and, essentially, unless it was made in accordance with the constitutional guarantees that protect accused persons.

64. It is important to note that article 30 of the Public Prosecutor's Department Bill stipulates that prosecutors may question an accused at a police station without the presence or participation of any police officer, except when police presence is required for security reasons. An accused person's statement shall, in all cases, be made in an appropriate place which conforms strictly to the provisions of the Code of Criminal Procedure. Article 31 of the Bill states that:

"When he arrives at the police premises, the prosecutor shall verify:

1. The accused person's physical condition;

2. The conditions of detention;

3. Strict compliance with all the accused person's rights;

4. That the date and time of the arrest or detention have been duly recorded;

5. That a case file has been duly opened in accordance with the provisions of the Code of Criminal Procedure;

6. The existence and accuracy of the list of the accused person's property confiscated by, or turned over to, the authorities;

7. Respectful treatment of victims or informants.

If he notes any irregularity, he shall prepare a report which he shall immediately submit to the Assistant Public Prosecutor."

65. As stated above, article 5 of the Constitution specifically prohibits torture and cruel, inhuman or degrading punishment or treatment. Various chapters and articles of the Penal Code currently under consideration also define and establish penalties for any attack on or infringement of human dignity, whether committed by an ordinary citizen not employed by the public administration or by a public official. For purposes of illustration, the draft Penal Code, prepared by the Penal Code Subcommittee of the Parliamentary Committees on Legislation and Constitutional Affairs for consideration by Parliament is annexed to this report.

Conclusion

66. For the first time in almost 40 years, the Republic of Paraguay has a Government headed by a civilian, Mr. Juan Carlos Wasmosy, who, on various occasions both within the country and in international forums, has expressed his firm intention to strengthen democracy in the country and, by so doing, to preserve and respect the rule of law. The President of the Republic declares that his Government will not cover up excesses or abuses by those who forget their responsibilities as public servants, and that he will always place the social State subject to the rule of law before any individual interest.

67. The country is openly engaged in strengthening democracy through the steady consolidation and rationalization of its State powers, carrying out investigations and bringing about major changes which guarantee greater public confidence in its leaders and representatives and ensuring the participation of citizens and the media, which enjoy full freedom of information. All these changes have been ratified by the Government through instruments aimed at the complete elimination of impunity and the abuse of power.

68. The Legislature includes various specialized committees in a number of areas, in particular human rights and the investigation of illicit acts, which are supported by article 195 of the Constitution. One provision of this article authorizes both Chambers of Congress to set up joint investigatory commissions on any matter of public interest, or on the conduct of its own members, and obliges public officials and private individuals to appear before such commissions in order to supply any information and documentation that may be required of them.

69. The Council of the Judiciary, recently created by the Constitution, is now fully functional. Its principal responsibilities and powers, as specified in article 264 of the Constitution, are:

(a) To propose lists of candidates for membership of the Supreme Court, selected on the basis of their abilities, qualifications and merits and to submit such lists to the Senate in order that it may make the necessary appointments, with the approval of the Executive;

(b) To propose to the Supreme Court, on the basis of the above selection criteria, lists of candidates for the posts of judges, officials of the lower courts and members of the Attorney General's office.

70. Using those criteria, the Council of the Judiciary is now in the process of selecting candidates on the basis of the curricula vitae submitted. This is an encouraging step toward the reform of the entire justice system.

71. Paraguay also has a new Attorney General, Mr. Aníbal de la Cruz Cabrera Verón. The new incumbent of this post was selected by the Executive from a list of candidates drawn up by the Council of the Judiciary and took his oath of office before the Senate. The Attorney General serves for a five-year term, cannot be removed from his post and may be re-elected.

72. Paraguay also has a new Supreme Court whose members are Mr. Oscar Paciello, Mr. Felipe Santiago Paredes, Mr. Enrique Sosa, Mr. Elixeno Ayala, Mr. Luis Lezcano Claude, Mr. Raúl Sapena Brugada, Mr. Jerónimo Irala Burgos, Mr. Wildo Rienzi and Mr. Carlos Fernández Gadea. This encouraging event marks a new phase of activity for the judiciary and provides even greater proof of the Government's commitment to the social State subject to the rule of law. Mr. Oscar Paciello was elected President of the Court by consensus and will remain in this post for one year. As stipulated by the 1992 Constitution, the three divisions making up the Supreme Court have been established: Constitutional; Criminal and Civil; and Commercial.

73. In addition, the following new members have been added to the Higher Electoral Tribunal: Mr. Carlos Mojoli, Mr. Alberto Ramírez Zambonini and Mr. Expedito Rojas. They have promised transparency and integrity in fulfilling the mandate of this body, which will officiate in the forthcoming municipal and national elections.

74. Paraguay is thus openly engaged in the process of fully consolidating its democratic system, one of the primary goals of which is the fight against the scourge of torture in all its forms. As proof of its commitment, Paraguay has accepted the competence of the Inter-American Court of Human Rights within the inter-American system and constantly engages in activities designed to promote and disseminate human rights, both among the general public and, in particular, among judges so that they may apply human rights effectively in their decisions.

75. It should be stressed that Paraguay, unlike other countries which have experienced periods of dictatorship, has not passed any "clean-slate" or amnesty act which might allow anyone guilty of human rights violations to escape punishment. Furthermore, as stated above, since torture is considered an affront to human rights, the Constitution itself declares it to be imprescriptible.

List of annexes*

1. Boccia Paz, Alfredo, Myrian Angélica González and Rosa Palau Aguilar, "Es Mi Informe: Los Archivos Secretos de la Policía de Stroessner" (My Report: the Secret Archives of the Stroessner Police), fourth edition.

2. Meilinger de Sannemann, Gladys, "El Paraguay y la Operación Condor en los Archivos del Terror" (Paraguay and Operation Condor in the Archives of Terror), first edition.

3. Ministry of the Interior decision No. 816 establishing a Human Rights Protection Office within the Legal Department of the Ministry of the Interior.

4. Draft Penal Code of Paraguay.

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* The annexes are available for consultation in the archives of the United Nations Centre for Human Rights.